

**A Association of Bank Officers, Peninsular Malaysia v
Ketua Pengarah Kesatuan Sekerja, Malaysia & Anor**

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL
REVIEW NO R1-25-10 OF 2000 AND R1-25-15 OF 2000

B RAUS SHARIF J
24 JULY 2004

*Administrative Law — Remedies — Certiorari — Application for — Trade union —
Registration of union in replacement of existing unions — Whether decision tantamount to
error of law*

C
*Administrative law — Remedies — Exhaustion of remedies — Application to quash
decision to register union — Whether applicants must exhaust remedies available under
Trade Unions Act — Appeal — Whether applicants could pursue remedies under public law
despite existence of statutory appeal procedure — Trade Unions Act 1959 s 71A*

D
*Civil Procedure — Parties — Locus standi — Trade union — Registration — Whether
applicants have legal interest in matter to challenge registration of new union*

E
*Labour Law — Trade Union — Registration — Registration of union in replacement of
existing unions — Whether there was overlap of scope of membership — Whether would
result in industrial unrest — Right to be heard — Whether existing unions be given right to
be consulted and heard — Director-General of Trade Unions — Discretion — Whether
exercised reasonably — Trade Unions Act 1959 s 12(3) (a)*

F
Bank Bumiputra Malaysia Bhd ('BMB') merged with Bank of Commerce
Malaysia Berhad ('BOC') to become Bumiputra Commerce Malaysia
Berhad ('BCB') and Bank Muamalat Malaysia Berhad. There were already
two registered unions in BOC, namely Kesatuan Kakitangan Eksekutif
Bumiputra-Commerce Bank Berhad ('BOCESU'), an in-house union
which represented officers in Grades 35 and 36, and Persatuan Pegawai-
Pegawai Bank Semenanjung Malaysia ('ABOM'), a national union which
represented officers in Grade 34. BBMB had its own union, ie, KEPAK-
G BBMB, that represented officers in Grade 34 to 39.

H
Subsequently, the former employees of BBMB currently employed by BCB
received acceptance by the Director-General of Trade Unions ('the first
respondent') to register a new in-house union ('the second respondent') in
BCB on the ground that it would be in the best interests of all parties to
come under a single union.

I
BOCESU and ABOM (the 'applicants') applied separately to this court for
a certiorari to quash the decision of the first respondent on the ground that
he had erroneously exercised his discretion. The second respondent
contended that the applicants have not availed themselves of the remedies
available to them under the Trade Unions Act 1959 and they have no locus
to make the applications. The parties agreed that the suits would be jointly
heard.

Held, allowing both applications with costs:

- (1) Section 15(2) of the Trade Unions Act 1959 ('the Act') provides no avenue for the applicants to apply to quash the first respondent's certificate of registration made in respect of the second respondent. It relates to a situation where it is the first respondent who initiates certain steps or gives notice to the affected trade union regarding a cancellation of its certificate of registration or ordering the said trade union to remove members from its membership register. Clearly, there is no remedy available to the applicants under this section (see para 11).
- (2) There is no dispute that ABOM did not appeal against the decision of the first respondent. Although BOCESU's appeal to the minister was still pending, it did not preclude the applicants from making these applications. Section 71A of the Act uses the word 'may' and not 'shall' and, as such, the applicants do not have to pursue the remedy under the Act before proceeding with these applications. In any event, even where there is a statutory appeal procedure available to the applicants in public law, the applicants are not precluded from resorting to judicial review on the ground of excess of jurisdiction or in cases involving the exercise of power by public authorities (see para 14).
- (3) The applicants at the material time were representing certain categories of officers of BCB. Registering the second respondent and opening the membership of the second respondent to all officers in BCB, would affect the position of the applicants. They have the legal interest and locus standi to challenge the registration of the second defendant in BCB (see para 15).
- (4) The first respondent had not properly exercised his statutory discretion under s 12(2) of the TUA in that he failed to consider the fact that there was an overlap in the scope of membership between the second respondent and the applicants. Section 12(2) discourages multiplicity of unions within the same industry or trade or establishment or occupation. By allowing the second respondent to be registered, the first respondent failed to realise that his action would cause industrial unrest in the establishment. This is because the existing unions, ie ABOM and BOCESU, had been accorded recognition by BCB and were already representing employees. The first respondent also failed to state that he had taken into consideration the interests of the workmen in Grades 34–36 in BCB who were within the scope of representation of BOCESU and ABOM. Being interested parties, the applicants should have been consulted and given the right to be heard (see paras 17 and 18).

[Bahasa Malaysia summary]

Bank Bumiputra Malaysia Bhd ('BMB') telah bergabung dengan Bank of Commerce Malaysia Berhad ('BOC') untuk menjadi Bumiputra Commerce Malaysia Berhad ('BCB') dan Bank Muamalat Malaysia Berhad. Telah terwujud dua kesatuan berdaftar dalam BOC, iaitu BOCESU, sebuah kesatuan dalaman yang mewakili pegawai-pegawai

A dalam gred 35 dan 36, dan ABOM, sebuah kesatuan kebangsaan yang mewakili pegawai-pegawai dalam gred 34. BBMB mempunyai kesatuannya sendiri, iaitu KEPAK-BBMB, yang mewakili pegawai-pegawai dalam gred 35 hingga 39.

B Sejurus kemudian, bekas pekerja-pekerja BBMB yang sekarang ini diambil kerja oleh BCB menerima persetujuan daripada ketua pengarah kesatuan sekerja ('responden pertama') untuk mendaftar sebuah kesatuan dalaman yang baru ('responden kedua') dalam BCB atas alasan adalah baik untuk kepentingan semua pihak supaya diwakili oleh satu kesatuan.

C BOCESU dan ABOM ('pemohon') memohon berasingan ke mahkamah ini untuk perintah certiorari membatalkan keputusan responden pertama atas alasan beliau telah khilaf dalam melaksanakan budi bicaranya. Responden kedua mengadu bahawa pemohon tidak menyempurnakan remedi-remedi yang sedia-ada di bawah Akta Kesatuan Sekerja ('Akta tersebut') dan mereka tidak mempunyai locus untuk membuat permohonan tersebut.

D Pihak-pihak telah bersetuju untuk perbicaraan ini dijalankan sekali gus.

Diputuskan, membenarkan kedua-dua permohonan dengan kos:

E (1) Seksyen 15(2) Akta tersebut tidak memberi jalan untuk pemohon memohon membatalkan sijil pendaftaran yang dikeluarkan oleh responden pertama berkenaan dengan responden kedua. Ia merujuk kepada keadaan di mana responden pertamalah yang mengambil langkah atau memberi notis kepada kesatuan sekerja berkenaan berkaitan dengan pembatalan sijil pendaftarannya atau memerintah kesatuan tersebut membuang ahli-ahlinya daripada daftar keahlian. Jelas sekali tidak terdapat apa-apa remedi yang boleh dipakai oleh pemohon di bawah seksyen tersebut (lihat perenggan 11).

F (2) Tidak dipertikaikan bahawa ABOM tidak merayu terhadap keputusan responden pertama. Walaupun rayuan BOCESU kepada menteri masih lagi berterusan, ia tidak menghalang kedua-dua pemohon daripada membuat permohonan ini. Seksyen 71A Akta tersebut menggunakan perkataan 'may' dan bukannya 'shall' dan dengan itu pemohon tidak perlu mengguna pakai remedi di bawah seksyen tersebut sebelum memajukan permohonan ini. Walau bagaimanapun, wujudnya prosedur rayuan berkanun di bawah undang-undang awam untuk diguna pakai oleh pemohon bukan suatu pembatasan untuk memohon untuk semakan kehakiman atas alasan terdapat keterlanjuran bidang kuasa atau kes-kes yang melibatkan penggunaan kuasa oleh pihak berkuasa awam (lihat perenggan 14).

G (3) Pemohon pada masa berkenaan mewakili segolongan pegawai-pegawai BCB. Mendaftarkan responden kedua dan membuka keahlian untuknya kepada semua pegawai di BCB, akan memberi kesan kepada pemohon. Semestinya, mereka mempunyai kepentingan undang-undang dan locus standi untuk mempertikaikan pendaftaran responden kedua di BCB (lihat perenggan 15).

H

I

- (4) Responden pertama tidak memakai budi bicaranya dengan betul di bawah s 12(2) Akta tersebut dalam mana beliau gagal untuk mempertimbangkan bahawa terdapat persamaan dalam skop keahlian responden kedua dan pemohon. Seksyen 12 tidak menyokong kewujudan pelbagai kesatuan dalam industri, perusahaan atau tempat kerja atau pekerjaan yang sama. Dengan membenarkan responden kedua didaftar, responden pertama gagal mengambil kira bahawa tindakannya akan mengakibatkan pertikaian perusahaan di tempat kerja. Ini adalah kerana kesatuan-kesatuan yang sedia-ada, iaitu ABOM dan BOCESU, telah diberi pengiktirafan oleh BCB dan telah mewakili pekerja-pekerjanya. Responden pertama juga gagal untuk menyatakan bahawa beliau telah mengambil kira kepentingan pekerja-pekerja di gred 34-36 dalam BCB yang berada dalam skop representatif BOCESU dan ABOM. Sebagai pihak yang mempunyai kepentingan, rundingan sepatutnya dibuat dengan pemohon dan diberikan hak untuk bersuara (lihat perenggan 17 dan 18).]

Notes

For cases on certiorari generally, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 185–393

For cases on exhaustion of remedies, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 488–493

For cases on locus standi, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4276–4285

For cases on registration of trade unions, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1522–1524

Cases referred to

Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam v Director General of Trade Unions & Ors [1990] 2 MLJ 231 (refd)

Lai Cheng Cheong v Sowaratnam [1983] 2 MLJ 113 (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1 (refd)

Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia v Minister of Labour, Malaysia & Ors [1989] 1 MLJ 30 (folld)

Legislation referred to

Trade Unions Act 1959 ss 15(2), 71A

LG Seah (Lobo & Associates) for the applicant in Application for Judicial Review No R1-25-10 of 2000

N Mahalingam (Maha & Peri) for the applicant in Application for Judicial Review No R1-25-15 of 2000

Azizah Hj Nawawi SFC (AG's Chambers) for the first respondent

P Kuppusamy (VK Raj with him) (P Kuppusamy & Co) for the second respondent

A Raus Sharif J:

[1] There are two separate applications for an order of certiorari to quash the decision of Ketua Pengarah Kesatuan Sekerja Malaysia ('the first respondent') dated 27 December 1999, in registering the Kesatuan Pegawai-Pegawai Bumiputra Commerce Berhad (Kepak Bumiputra) ('the second respondent') to represent all workmen of Bumiputra Commerce Bank Berhad ('BCB'). In R2-25-15-2000 the applicant is Kesatuan Kakitangan Eksekutif Bumiputra-Commerce Bank Berhad ('BOCESU') while in R2-25-15-2000, the applicant is Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia ('ABOM'). By agreement of all parties, the two applications were heard jointly.

C [2] Briefly, the relevant facts leading to the two applications are as follows.

D [3] In 1999, Bank Bumiputra Malaysia Berhad ('BBMB') underwent a merger exercise with another bank known as Bank of Commerce Malaysia Berhad ('BOC'). Under the merger, the conventional banking assets of BBMB were transferred to BOC and BBMB took over the Islamic banking assets of BOC. The ultimate result of this merger was that BBMB conducted solely Islamic banking whereas BOC conducted conventional banking business. Subsequent to the merger exercise, BBMB was renamed as Bank Muamalat Malaysia Berhad ('Bank Muamalat') and BOC was renamed as Bumiputra Commerce Bank Berhad ('BCB').

E [4] Prior to the completion of the said merger, BOC made offers of continued employment to the employees of BBMB. A sizable number of BBMB's employees accepted the offer and subsequently became the employees of BCB. In BOC, there were two recognised unions, ie BOCESU an in-house union which represented officers in Grades 35 and 36 and ABOM, a national union which represented officers in Grade 34. However in BBMB there was only one union representing all officers in Grade 34 to 39 and the union was known as Kesatuan Pegawai-Pegawai Bank Bumiputra Malaysia Bhd or KEPAK-BBMB.

F [5] With the merger, the former employees of BBMB who are now employees of BCB, wanted to maintain their 'KEPAK identity' and decided to form an in-house union and applied to the first respondent for a new union to be registered in BCB. The first respondent accepted the application and registered a new in house union in BCB. The union is the second respondent. The applicants were not happy with the registration of the second respondent. Hence, the applications by the applicants.

G [6] It is the applicants' contention that the first respondent in registering and permitting the second respondent to represent all employees of BCB except those in management, confidential and security positions had committed an error of law and acted in excess or without jurisdiction in that the first respondent:

- I**
- (i) had failed to consider or take into account that there are already in existence two other trade unions viz - 'BOCESU and ABOM' which

were already representing the employees whom the second respondent intended to represent. **A**

(ii) had failed to consider or take into account that, except those in management, confidential and security positions, the second respondent's scope of membership overlapped with BOCESU's and ABOM's scope of membership. **B**

(iii) had failed to give an opportunity to the applicants to be heard at the time or before the registration of the second respondent.

(iv) had failed to act in accordance with the provisions of sections 12(2), 15(2) and 26(1A) of the Trade Unions Act 1959 ('the Act'). **C**

[7] The first respondent, in defence of his decision to register the second respondent made the following averments in this affidavit dated 26 February 2004.

(i) this case is unique and arise from the merger of BOC and BBMB to become BCB. During the merger, there is no single union to look after the interest of all the officers in BCB. Hence the registration of the second defendant is to protect the interest of all the officers in BCB. **D**

(ii) the merger raises the question of two unions that existed before the merger, namely BOCESU and KEPAK BBMB. Because of the refusal of the parties to merge and in order to reach a settlement, the second respondent was registered. It is more reasonable and effective to have all members under one union since it will be more effective to affair the object of the union, that is, to protect the interest of all the officers in BCB. **E**

(iii) the decision to register the second respondent is to ensure that the interest of all the officers is protected under one union. The scope of BOCESU and ABOM is for different grades, whereas the scope of the second respondent will cover all the grades of officers in BCB. **F**

[8] It is submitted by the learned Senior Federal Counsel that the first respondent has considered the interests of all the officers in BCB before registering the second respondent. According to her, the registration of the second respondent is consistent to s 12(3)(a) of the Act.

[9] The second respondent, in opposing the applications, raised two preliminary issues namely: **G**

(i) both the applicants have not availed themselves of the remedies available to them under the said Act; and

(ii) both the applicants have no locus to make the applications. **H**

FINDINGS

Preliminary issues

(i) Applicants have not availed themselves of the remedies under the Act.

[10] The second respondent's entire submission on this issue is premised on the underlying assumption that the applicants have not exhausted their remedy under s 15(2) or s 71A of the Act and, hence, this court has no **I**

A jurisdiction to entertain the applicants' applications. With respect, I am of the view that the second respondent's underlying assumption is incorrect.

[11] Section 15(2) of the Act provides as follows:

- (2)** Where two or more registered trade unions exist in a particular establishment, trade, occupation or industry, as the case may be, the Director General may, if he is satisfied that it is in the interest of the workmen in that establishment, trade, occupation or industry to do so –
- B**
- (a)** cancel the certificate of registration of the trade union or trade unions other than the trade union which has the largest number of workmen in the said establishment, trade, occupation or industry as its members; or
- C**
- (b)** issue an order requiring the trade union or trade unions other than the trade union which has the largest number of workmen in the said trade, occupation, industry or place of employment as its members to remove from the membership register those members as are employed in that establishment, trade, occupation or industry and thereafter the trade union or trade unions so ordered shall not enrol as members workmen in that establishment, trade, occupation or industry, except with permission in writing of the Director General; an order under this paragraph shall have full force and effect notwithstanding any provision of rules of the trade union concerned.
- D**

[12] I am of the opinion that s 15(2) provides no avenue for the applicants to apply to quash the first respondent's certificate of registration made in respect of the second respondent. To me, s 15(2) relates to a situation where it is the first respondent who initiates certain steps or gives notice to the affected trade union regarding a cancellation of its certificate of registration or ordering the said trade union to remove members from its membership register. Clearly, there is no remedy available to the applicants under s 15(2) of the Act.

E

F

[13] In respect of s 71A of the Act, the thrust of learned counsel for the second appellant's contention is that ABOM did not appeal against the decision of the first respondent, while BOCESU did appeal to the Minister and the appeal is still pending. Thus, it is submitted for the second respondent, that since the statute creates a right and gives a specific remedy, the applicants must resort to that remedy before resorting to the courts.

G

[14] Section 71A of the the Act as it is relevant to these applications provides as follows:

- (1)** Any person who is dissatisfied with any opinion, order, declaration, refusal, cancellation, withdrawal, direction or decision, as the case may be, given, made or effected by the Director General under any of the following provisions:
- H**
- (a)** section 2(2);
- (b)** section 12,
- (c)** section 15(2)(b) or section 15(4)'
- I**
- May, within thirty days from the date of the opinion, order, declaration, refusal, cancellation, withdrawal, direction or decision of the Director General, appeal against the same to the Minister, in such manner as may be prescribed by regulation.

[15] There is no dispute in this case that ABOM did not appeal against the decision of the first respondent. However BOCESU did appeal to the Minister. But the appeal before the Minister is still pending. The question is, does this preclude the applicants from making these applications. With respect, I do not think so. The section used the word 'may' and not the word 'shall' and as such I am of the view the applicants do not have to pursue the remedy under the Act before proceeding with these applications. In any event, in public law, even where there is a statutory appeal procedure available to the applicants, the applicants are not precluded from resorting to judicial review on the ground of excess of jurisdiction or in cases involving the exercise of power by public authorities. (See, *Lai Cheng Cheong v Sowaratnam* [1983] 2 MLJ 113, *Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam v Director General of Trade Unions & Ors* [1990] 2 MLJ 231 and *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1).

(ii) Locus Standi

[16] The second respondent's second preliminary objection is that the applicants have no locus standi to challenge the decision of the first respondent because the applicants 'have no legal interest in the matter'. To me, this is a non-issue. This is because the court had granted leave to the applicants to apply for judicial review and thus the issue of the applicants' locus standi in the matter was clearly established. Moreover, from the facts of this case, the applicants clearly have legal interest in the matter. The applicants at the material time were representing certain categories officers of BCB. By registering second respondent and opening the membership of the second respondent to all officers in BCB, will clearly effect the position of the applicants. Surely, they have legal interest and locus standi to challenge the registration of the second defendant in BCB.

[17] Thus, I find that there is no merit in the preliminary issues raised by the second respondent.

Main issue

[18] It is not disputed that the first respondent has wide discretion as to whether he should or should not register the second respondent. Surely, if the respondent has acted within the provisions of the Act and has acted bona fide and considered relevant matters without abusing his powers, then that discretion cannot be reviewed by judicial review proceedings. But this is not the situation in this case. To me, the first respondent has not properly exercised his statutory discretion under s 12(2) of the Act. This is because the first respondent failed to consider the fact that the scope of the second respondent's membership was overlapping with the scope of membership of the applicants. This overlapping factor should have put the first respondent on guard because of s 12(2) which states:

The Director General may refuse to register a trade union in respect of a particular establishment, trade, occupation or industry if he is satisfied that there

- A** is in existence a trade union representing the workmen in that particular establishment, trade, occupation or industry and it is not in the interest of the workmen concerned that thus be another trade union in respect thereof.

- [19]** The first respondent in his reasons stated that he registered the second respondent in order to protect the interest of all workmen of BCB and to bring them under one umbrella. But to me, what the first respondent did was the opposite and contrary to s 12(2) of the Act which discourages multiplicity of unions within the same industry or trade or establishment or occupation. By allowing the second respondent to be registered, the first respondent has failed to realise that his action will cause industrial unrest in the establishment. This is because the existing unions, ie ABOM and BOCESU have been accorded recognition by BCB. They are already representing employees in Grade 34–36 in BCB. By allowing the second respondent to represent the same grades in the same occupation, ie Grade 34–36 officers, is not a proper and just exercise of discretion. In fact, the first respondent by registering the second respondent has created a rift between the unions and employees of BCB and also the employer of BCB.
- B**
- C**
- D** From the affidavit of the application in R2-25-15-2001, there has been an allegation that the second respondent office bearers have interfered with the affairs of ABOM and BOCESU by coercing and intimidating the employees of BCB as well as seeking them to join the second respondent. Thus the first respondent's decision has clearly caused mistrust and disunity amongst the officers of the three unions.

- E**
- [20]** The principles and the points of law that arise in this case fall fairly and squarely within the principles and points of law decided by the Supreme Court in *Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia v Minister of Labour, Malaysia & Ors* [1989] 1 MLJ 30. This case adequately illustrates how a minister by misdirecting himself on a point of law has wrongly exercised his statutory discretion.
- F**

- [21]** In that case, the Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia was a registered trade union which received recognition from many commercial banks including Maybank Bhd. In October 1986, the Director General registered another bank union known as Association of Maybank Officers to cater for the existing officers in Maybank. Later, Maybank accorded recognition to the Association of Maybank Officers and withdrew its recognition to the Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia. The question that had to be decided by the Court was whether the Director General had exercised his discretion under s 12(2) of the Act properly when the Director General stated that he registered the Association of Maybank Officers because he was satisfied that it was in the interests of the officers in Maybank Bhd to register the association of Maybank officers as a trade union. The Supreme Court held that the registration of the association was null and void and went on to say:
- G**
- H**

- I** The Registrar did not state that he had also taken into consideration the interest of other workmen in similar occupation as the officer in the bank. It should be noted that sub-s(2) requires that the interest of the workmen in the particular occupation should be considered, not just the interest of the officers in the

employment of the bank. Therefore it is clear that the Registrar had failed to correctly take into account the provision of sub-s(2). In our judgement the registration of the association as a trade union was a nullity because the Registrar had failed to take into consideration the interest of the workmen in the particular occupation, which he was required by the law to take into consideration, and he had no power to register the association as a trade union without considering their interest. Similarly the decision of the Minister on appeal to confirm the registration was a nullity because it cannot be said that all matters required by law to be taken into consideration had in fact been taken into consideration by him.

[22] Similarly, in the present case the first respondent has said that he registered the second respondent because he was satisfied that the registration of the second respondent was in the interests of all the workmen in BCB. But the first respondent has, however, failed to state in his reasons that he had taken into consideration the interest of the workmen in Grade 34–36 in the employment of BCB who are within BOCESU's and ABOM's scope of representation when he decided to register the second respondent. This clearly show that the first respondent has failed to take into consideration the interest of the workmen in that particular occupation, ie Grade 34–36 in BCB as stated in the *Maybank* case above. This was a relevant consideration which the first respondent failed to consider.

[23] The first respondent in his affidavit has also stated he registered the second respondent in the interests of all parties and wanted to bring the unions under one umbrella. I am of the view that if that was the reason, then BOCESU and ABOM being the interested parties should have been consulted and given the right to be heard because the registration of the second respondent would have a direct impact and repercussion on the scope of BOCESU and ABOM. The question of whether a union should be given an opportunity to be heard by the Director-General was ventilated in *Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam v Director General of Trade Unions & Ors* [1990] 3 MLJ 231. In that case, whilst the recognition issue of the applicant union was pending for determination, the Director General registered the fourth defendant union. The employers (second and third defendants) accorded the fourth defendant recognition but withdrew its recognition to the applicant union. The issue that arose was whether the applicant union should have been given an opportunity of being heard before the Director General registered the fourth defendant. Edgar Joseph Jr SCJ invoked the concept of legitimate expectation of being heard in favour of the applicant union when he said:

applying the principle to the fact disclosed in the statement of claim, I am satisfied that it was certainly arguable that the plaintiff could invoke the concept of legitimate expectation of being afforded an opportunity of making representations before the first defendant proceeds to register the fourth defendant as a trade union ...

[24] In our present case the first respondent has not given the applicants an opportunity of being heard before the registration of the second respondent. Surely, there was a reasonable expectation that the first respondent would call BOCESU and ABOM to give their views and their representations before the registration of the second respondent which

- A** would be representing employees in Grade 34 to 36 who are within the scope of membership. A reasonable person similarly circumstanced would have anticipated that trouble would brew between the unions because the registration of the second respondent would cause dissatisfaction among the employees of BCB, especially Grade 34 to 36, and the existing unions in BCB. It is for that reason that the first respondent should have afforded
- B** BOCESU and ABOM an opportunity to be heard before the registration of the second respondent.

[25] In conclusion, I am of the opinion that this is a fit case where this court ought to exercise its judicial review powers. Accordingly, I allow both applications with costs.

- C** *Applications allowed with costs.*

Reported by AG Kalidas

D

E

F

G

H

I